IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.09.2024

CORAM

The Hon`ble Mr.Justice P.DHANABAL

**CRL OP.No.19341 of 2022**
**and**
**Crl. M.P. No.12746 of 2022**

Thirupathi S/o. Narayanasamy … Petitioner / 2nd accused.

vs

**1.The State represented by:-**
The Inspector of Police,
Royapettah Police Station,
Chennai.
[Cr. No.479 of 2021] …. 1st Respondent / Complainant

2.Saravanan
[Authorized Signatory of M/s. Kaleeswari
Refinery Pvt. Ltd.,] … 2nd Respondent / Defacto complainant

**PRAYER: -** The Criminal Original Petition is filed under Section 482 of Criminal Procedure Code praying to call for the records in FIR No.479 of 2021 on the file of the 1st respondent and quash the same.

For Petitioner : Mr. M.R. Thangavel
For Respondents : Mrs. G.V. Kasthuri,
Additional Public Prosecutor
[for R1]

Mr. L. Infant Dinesh [for R2]

**ORDER**

This Criminal Original Petition has been filed by the petitioner to quash the proceedings in FIR No.479 of 2021 on the file of the 1st respondent.

2. The case of the prosecution is that the 1st respondent had registered the case based on the complaint given by the 2nd respondent for the allegations that the 1st accused, who was appointed as Senior Executive for trading of De-oiled cake at Kaleeswari Refinery Private Limited, Mylapore, Chennai, which is involved in the production of refined edible oil viz., sunflower oil, groundnut oil, palm oil, olive oil, blended oil, coconut oil, de-oiled cake etc., had in collusion with the petitioner / 2nd accused had manipulated account entries and had misappropriated a sum of Rs.24,96,338/- towards the supply of coconut de-oiled cake in her position.

3. According to the petitioner, the dispute is purely on business transactions and the petitioner has no role in misappropriation of funds

by the 1st accused. The 2nd respondent / defacto complainant is involved in production of edible oil products. One Mrs. Priya was appointed as Senior Executive for trading of coconut de-oiled cake in the company of the defacto complainant. The petitioner is a Veterinary Doctor carrying on feed business in the name and style of "Sri Power Feeds". While being so, the petitioner came to know that the defacto complainant's company for the purchase of coconut de-oiled cake and contacted the said company through the Senior Executive Mrs. Priya. As such, the petitioner also contacted the Senior Executive of said company and carried the purchase of coconut de-oiled cake for his Sri Power Feeds. In the course of business, the petitioner used to transfer money from his Canara Bank account to Kaleeswari Company's bank account and after the receipt of money, the products would be delivered to the petitioner. The value of the de-oiled cake delivered to the petitioner, were lesser than the money transferred and the balance amount will be kept in reserve with the defacto complainant's company. As such, nearly Rs.4 lakhs was kept in reserve in the defacto complainant's company. On 01.10.2020, the de-oiled cake which were delivered to the petitioner's company were less in quality and the same was informed to the Senior Executive of the defacto complainant's company and the 1st accused who was the Senior Executive convinced the petitioner to reduce the price to avoid return of goods and further assured that such things will not happen next time. Further on 09.04.2020, the petitioner was transferred a sum of Rs.2 lakhs to the defacto complainant's company's account towards the purchase of de-oiled cake. However, the same was returned to the petitioner's account. When the same was informed to the Senior Executive / 1st accused had given her account number to transfer the said Rs.2 lakhs to her account and based on which, the products were supplied to the petitioner. Thereafter the same practice was continued for subsequent purchasers.

4. The learned counsel appearing for the petitioner would contend that there are business transactions between the defacto complainant's company and the petitioner's company. All the allegations are purely civil in nature. As far as this petitioner is concerned, he has paid money to the defacto complainant's Manager and due to the substandard quality

of the material, the rate was reduced. Therefore, there is no any offence committed by this petitioner and there is no any ingredient to constitute offence under Section 409 and 420 of IPC. Therefore, the pending FIR is liable to be quashed as against this petitioner.

4. The learned Additional Public Prosecutor appearing for the 1st respondent would submit that based on the complaint given by the 2nd respondent, they registered the FIR in Cr. No.479 of 2021 for the offences under Sections 409 and 420 of IPC. Thereafter, they conducted an elaborate investigation and thereafter, this Court stayed the matter, thereby they were unable to conduct investigation.

5. The learned counsel appearing for the 2nd respondent would contend that the petitioner along with the Senior Manager of the defacto complainant's company, cheated for an amount of Rs.24,96,338/- by way of depositing the amount into the account of Senior Manager and also by reducing the price of the material. In fact, earlier the petitioner deposited the money in the name of the defacto complainant's company account

and thereafter, he paid the money to the account of the 1st accuse. Therefore, they colluded with each other and misappropriated the amount. Therefore, the case is at initial stage and it needs elaborate investigation and at this stage, the petition is liable to be dismissed.

6. Heard the arguments and perused the materials available on record.

7. In this case, it is an admitted fact that the petitioner had business dealings with the defacto complainant's company. It is also an admitted fact that the amount was paid for the goods supplied by the defacto complainant's company. The main allegation as against the petitioner is that the petitioner reduced the price of the material and thereby, caused loss to the tune of Rs.24,96,338/- and also some of the amount was deposited into the bank account of the 1st accused. As far as this petitioner is concerned, it is an admitted fact that he paid the amount to the goods supplied by him to the account of the defacto complainant's company and thereafter, as per the advice of the 1st respondent herein, the amount was deposited into the account number given by the 1st accused. The above facts show that it is purely a business transaction.

8. According to the petitioner, some of the goods were in substandard quality and thereby, the company has given debate. Therefore from the above, it is clear that for the business transactions, the defacto complainant has given a colour of criminal. At this juncture, the learned counsel appearing for the petitioner also produced judgment of Hon'ble Supreme Court in ***Delhi Race Club (1940) Ltd. & Others vs. State of Uttar Pradesh & another*** reported in ***CDJ 2024 SC 702,*** wherein, in Para Nos.31, 32 and 34, the Hon'ble Supreme Court has held as follows:-

> *"31. At the most, the Court of the Additional Chief Judicial Magistrate could have issued process for the offence punishable under Section 420 of the IPC i.e., cheating but in any circumstances no case of criminal breach of trust is made out. The reason being that indisputably there is no entrustment of any property in the case at hand. It is not even the case of the complainant that any property was lawfully entrusted to the appellants and that the same has been dishonestly misappropriated. The case of the complainant is plain and simple. He says that the price of the goods sold by him has not been paid. Once there is a sale, Section 406 of the IPC goes out of picture. According to the complainant, the invoices raised by him were not cleared. No case worth the name of cheating is also made out.*
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> *32. Even if the Magistrate would have issued process for the offence punishable under Section 420 of the IPC, i.e, cheating the same would have been liable to be quashed and set aside, as*

*none of the ingredients to constitute the offence of cheating are disclosed from the materials on record.*

*34. Similarly, in Central Bureau of Investigation, SPE, SIU(X), New Delhi vs. Duncans Agro Industries Ltd., Calcutta reported in (1996) 5 SCC 591 this Court held that the expression "entrusted with property" used in Section 405 of the IPC connotes that the property in respect of which criminal breach of trust can be committed must necessarily be the property of some person other than the accused or that the beneficial interest in or ownership thereof must be in the other person and the offender must hold such property in trust for such other person or for his benefit. The relevant observations read as under:-*

*"27. In the instant case, a serious dispute has been raised by the learned counsel appearing for the respective parties as to whether on the facts of the allegations, an offence of criminal breach of trust is constituted or not. In our view, the expression "entrusted with property" or "with any dominion over property" has been used in a wide sense in Section 405 IPC. Such expression includes all cases in which goods are entrusted, that is, voluntarily handed over for a specific purpose and dishonestly disposed of in violation of contract. The expression "entrusted" appearing in Section 405 IPC is not necessarily a term of law. It has wide and different implications in different contexts. It is, however, necessary that the ownership or beneficial interest in the ownership of the property entrusted in respect of which offence is alleged to have been committed must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit. The expression 'trust' in Section 405 IPC is a comprehensive expression and has been used to denote various kinds of relationships like the relationship of trustee and beneficiary, bailor and bailee, master and servant, pledger and pledgee. When some goods are hypothecated by a person to another person, the ownership of the goods still remains with the person who has hypothecated such goods. The property in respect of which criminal breach of trust can be committed must necessarily be the property of some person other than the accused or the beneficial interest in or ownership of it must be in the other person and the offender must hold such property in trust for such other person or for his benefit. In a case of*

*pledge, the pledged article belongs to some other person but the same is kept in trust by the pledgee*".

9. On careful persual of the above judgment, it is clear that for the supply of goods, Sections 406 and 409 of IPC would not attract. In this case, there are no ingredients to constitute offences under Section 420 of IPC and there is no any material to show that the defacto complainant had an intention to cheat the defacto complainant from the inception and the available records show that the petitioner has already paid money for the goods supplied to him and also the dispute involved between the parties are money transactions and it is a civil dispute and the civil dispute cannot be given criminal colour. Therefore, the pending proceedings as against this petitioner, are abuse of process of law and hence the FIR is liable to be quashed as against this petitioner.

10. Therefore, the FIR in Cr. No.479 of 2021 on the file of the 1st respondent is quashed as far as this petitioner is concerned.

11. Accordingly, this Criminal Original Petition is allowed. No

costs. Consequently, the connected miscellaneous petition is closed.

11.09.2024

index: Yes/No
Internet: Yes/No
Speaking/Non Speaking order
mjs

**P.DHANABAL,J**
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To

1. The Inspector of Police,
Royapettah Police Station,
Chennai.

2. The Public Prosecutor, High Court, Madras.

CRL.O.P. No.19341 of 2022

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